UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

STAHL SPECIALTY COMPANY

and

Case 17-CA-088639

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL#1464 affiliated with the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

ORDER

The Respondent's Request for Special Permission to Appeal Administrative Law Judge Christine Dibble's ruling denying the Respondent's petitions to revoke the subpoenas duces tecum issued by the Acting General Counsel and the Union is denied.¹ We find that the Respondent has failed to establish that the judge abused her discretion in denying the petitions.²

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¹ In addition, we deny the Respondent's motion to stay this proceeding or, in the alternative, to assign this case to a different administrative law judge. The Respondent contends that the Board lacks a quorum because the President's recess appointments to the Board are constitutionally invalid, and therefore has no authority to act. In addition, the Respondent argues that the appointment of administrative law judge Christine Dibble by this Board is therefore null and void, and requests that the Board act by assigning this case to a different administrative judge. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act.

² In denying the Special Appeal, we clarify that the Respondent is directed to provide all responsive documents and communications available without resort to analysis of email backup tapes, subject to the Acting General Counsel and the Union having the

Dated, Washington, D.C., March 26, 2013

MARK GASTON PEARCE, CHAIRMAN
RICHARD F. GRIFFIN, JR., MEMBER
SHARON BLOCK, MEMBER

opportunity to persuade the judge that an additional search is necessary. We further note that to the extent the Respondent has provided some of the requested material, it is not required to do so again, provided that the Respondent accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, and provides all of the information that was subpoenaed.

We do not pass on the Acting General Counsel's March 21, 2013 Motion for the Admission of Charging Party Exhibits 9, 10, 11 and 13 into the Record. That motion should more appropriately be raised to the judge.